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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

JAMES H. CAMP, et al.,

Petitioners,

v.

DONALD H. RUMSFELD, et al.,

Respondents.

REPLY TO RESPONDENTS' MEMORANDUM IN OPPOSITION

Petitioners move that the time within which they may file a Petition for Writ of Certiorari to review the judgment of the Court of Appeals for the Ninth Circuit, entered on the 17th day of September, 1975, in the cause pending therein entitled CAMP v. RUMSFELD, be extended from the 16th day of December, 1975, to and including the 16th day of February, 1976.

REASONS WHY EXTENSION OF TIME IS JUSTIFIED

The Memorandum For The Respondents In Opposition to the Petition For Certiorari base their opposition on the fact that the petition was filed two days late and therefore deprives the Supreme Court of jurisdiction over this case. Petitioners acknowledge the 90 day time limit as laid down in 28 U.S.C. §2101(c), but urge that the petition would have been timely filed but for circumstances beyond their control.

The Petition For A Writ of Certiorari, along with the required number of copies, was delivered to Bor-Air Freight Co. Inc., who guaranteed delivery to the Supreme Court in Washington, D.C. by December 15, 1975, "for sure." However, Bor-Air did not deliver the petition to Washington, D.C. as promised, but rather to Dulles Airport in Virginia. Therefore due to the accidental and unexpected delivery error by Bor-Air, the petition did not reach the Court until December 18, 1975, two days beyond the allowable period for timely filing of the petition. (See Appendix A)

Although respondents cite *Toledo Scale Co. v. Computing Scale Co.*, 261 U.S. 399, 417-418, for the proposition that an untimely filing deprives the Court of jurisdiction, there have

been several indications by the Court that time limitations for filing are procedural in nature rather than jurisdictional. See *Taglianetti v. United States*, 394 U.S. 316 n.1 (1969); *Heflin v. United States*, 358 U.S. 415 n.7 (1959). The Court has stated on occasion that there is no difference between the time limitation found in Court Rule 22(2) and that established by statute in 28 U.S.C. §2101(b) and (c). *Schacht v. United States*, 398 U.S. 58, 65 (1970) (Harlan, J., concurring). Recognizing that the function of such time limitations is not jurisdictional, the Supreme Court has consistently held that an untimely petition should not be denied arbitrarily, especially when the circumstances causing the late filing are beyond the petitioner's control. *See Scofield v. N.L.R.B.*, 394 U.S. 423, 427 (1968); *Teague v. Regional Comm'r of Customs.*, 394 U.S. 977, 981-982 (1968) (Black, J., dissenting), *Aero Mayflower Transit, Inc. v. United States*, 409 U.S. 905-907 (1972) (Douglas, J., dissenting); *Durham v. United States*, 401 U.S. 481 (1971); *Schacht v. United States*, 398 U.S. 58, 63-65 (1970).

As Justice Black noted in *Teague v. Regional Comm'r of Customs:* "I for one cannot think of any purpose Congress might have had that could possibly be served by holding that a litigant

can be defeated solely because of a delay that was entirely beyond his control." 398 U.S. at 983. In an analogous situation involving the timeliness of an appeal to the Court of Appeals, the Supreme Court noted that the time limit could not be arbitrarily enforced: "If that were true, the existence of the right to appeal would be subject to contingencies which no degree of diligence by an appellant could control. Ambiguities in statutory language should not be resolved so as to imperil a substantial right which has been granted." *R.F.C. v. Prudence Group*, 311 U.S. 579 (1941). *See also, Georgia Lumber Co. v. Compania*, 323 U.S. 334 (1945).

While the late filing of petitions is certainly frowned upon, see Rule 22(4), the cases cited above show that when the circumstances causing the late filing are beyond petitioner's control, the time requirements have been waived by the Court. Here, as has been shown, the reason for the delay in filing of the petition lies in the completely unexpected and accidental error in delivery by Bor-Air Freight Co. Therefore, it is respectfully

urged that the Court grant petitioners' request for an extension of time within which to file their Petition For A Writ Of Certiorari.

Respectfully submitted,

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